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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,216	04/17/2006	Andrew Corbin Fuller	3375115	7005

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EXAMINER	
NORMAN, MARC E	

ART UNIT	PAPER NUMBER
3744	

MAIL DATE	DELIVERY MODE
10/25/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/576,216	FULLER, ANDREW CORBIN	
	Examiner	Art Unit	
	Marc E. Norman	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 July 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7,9-12 and 14-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,9-12 and 14-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *17 April 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's cancellation of claim 31 overcomes the previously applied rejections under 35 USC 103 and 35 USC 112. However, based upon newly found art, new rejections of claims 1-7, 9-12, and 14-30 are deemed necessary and are set forth below.

Applicant's Terminal Disclaimer filed 7/29/10 has been disapproved since the language regarding 35 USC 154 to 156 and 173 was deemed unacceptable. More specifically, 35 USC 155 and 156 ask for extension of the patent term which is not acceptable in statutory disclaimers. Accordingly, the double patenting rejection as set forth in the previous Office Action is carried forward and maintained, as set forth below.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how an adjusting means of a system can include a repair person. The person is something external of and separate from the system. Accordingly, this claim has not been examined on the merits below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 9-12, 14, 15, 19-21, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Huber (U.S. Patent 5,626,288).

As per claims 1, 4, 9-12, 14, 15, 20, and 21, Huber discloses a dehumidification system (and inherently the installation thereof) comprising a dehumidifier (ventilation fan functions to dehumidify space – see for example column 2, line 63 – column 3, line 2); a user interface (adjustable thermostat 8), humidity sensor (column 6, lines 7-10), temperature sensor 2, means for selecting a desired humidity (see for example column 3, line 9), a building material moisture sensor and selection means (column 8, lines 1-3, 6-8); a controller 15 interconnected with the sensors and selecting means (Figure 2), wherein the controller activates the dehumidifier when the relative humidity in the space is higher than a desired level (column 2, line 63 – column 3, line 2) and activates the dehumidifier when the building material moisture is higher than a desired level column 8, lines 6-8); a plurality of fans 12 (Figure 2); the user interface having a display (inherent) remote from the dehumidifier (Figure 2); warning means/alarm system for when the sensed parameters exceed the set limits (column 8, lines 16-28).

As per claims 2, 19, and 26, Huber discloses the components being connected by wiring (Figures 1 and 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims, 3, 5-7, 16-18, 22, 23, 25, and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huber.

As per claims 3, 18, 27, and 28, Huber does not specifically teach wireless/radio frequency connections. However, official notice is taken that such wireless control connections are generally old and well known in the art and would have been obvious to one of ordinary skill in the art at the time of the invention to apply to the system of Huber as a simple mechanical expedient for the purpose removing the need for invasive or complex wiring.

As per claims 5-7, 16 and 17 official notice is taken that service lights, display of control parameters, power input, and control parameter (in this case humidity) selecting means are all common features of thermostatic user controls that would have been obvious to one of ordinary skill in the art as simple matters involving predictable results.

As per claim 22, Huber does not specifically teach a second, separate controller. However, it is considered an obvious matter of design choice well established within the control arts as to whether control functions are provided by a single master controller or by multiple connected controllers.

As per claim 23, Huber teaches the dehumidifier comprising a ventilation system.

As per claim 25, official notice is taken that providing a warning when a control mechanism is malfunctioning is generally old and well known in the control arts and would a have been obvious to apply to the input means of Huber as simply a specific application of this basic concept.

As per claims 29 and 30, official notice is taken that the placement of a single sensor or multiple sensors within a single housing is a matter of engineering design choice that would have been obvious to one of ordinary skill in the art for the purpose of providing convenient and efficient sensor access.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting

ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

See Response to Arguments above regarding the failure of the Terminal Disclaimer filed 7/29/10 to overcome the previously applied Double Patenting rejection.

Claims 1-30 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,978,631 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because they remain directed to the same basic dehumidification/moisture sensing arrangement such that given the patented claimed invention one of ordinary skill in the art could easily arrive at the claimed invention of the present application. Applicant previously argued that the claims are patentably distinct because the patented claims do not include a temperature sensor. However, official notice is taken that it is common and typical for building climate control systems to include a temperature sensor, and that it would have been obvious to one of ordinary skill in the art to incorporate such a sensor within the system of the patented claims for the purpose of further maintaining the temperature within the space at a desirable comfort level for the occupants.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc E. Norman whose telephone number is 571-272-4812. The examiner can normally be reached on Mon.-Fri., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MN
/Marc E. Norman/
Primary Examiner, Art Unit 3744